

Appl. No. 10/628,734
Amdt. dated July 17, 2006
Reply to Office action of April 17, 2006

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REMARKS

Priority

Priority to Application No. 09/447,966 has been denied because the priority document fails to provide adequate support or enablement for the claims. Applicants have amended the claims to obviate the rejection. It is the Applicants' opinion, that claim 1, as amended is adequately supported in the priority document.

Petition under 37 C.F.R. 1.78:

Applicants have filed a petition under 37 CFR 1.78 requesting that a priority claim to U.S. Application No. 08/975,573, filed Nov. 21, 1997, which is a continuation of Application No. 08/571,536, filed Dec. 13, 1995, along with a statement that the entire delay in filing the priority claim was unintentional. A replacement page 1 of the specification is enclosed that indicates the priority claim.

Support for intravascular injection of naked polynucleotides for delivery to skeletal muscle tissue can be found in the specification on page 32-33 (Example 8) of Application No. 08/571,536.

Objections to the Claims

Claims 1-3 and 35 are objected to because they are not drawn to the elected invention. Applicants have made the appropriate corrections.

Rejection of the claims under 35 USC §112:

Claims 1-5, 9-18, 22-27, and 29-35 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The action states that it is unclear if improving or enhancing blood flow is an inherent property of the listed steps or if other steps are required to complete the intent of the invention. Applicants have amended claim 1 to obviate the rejection. Claim 35 has been canceled.


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Rejection of the claims under 35 USC §103:

Claims 1-5, 9-18, 22-27, and 29-35 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Isner (US Patent 6,121,246) in view of Milas et al. (1997), Von Der Leyen et al., and Budker et al. (1998). Applicants have amended claim 1 and filed a petition to grant a delayed priority claim to Application No. 08/571,536, filed Dec. 13, 1995, to obviate the rejection. Claim 35 has been canceled. It is the Applicants' opinion that amended claim 1 contains adequate support in the priority documents. In view of the amendment and the priority claim, Applicants request reconsideration of the rejection.

The Examiner's objections and rejections are now believed to be overcome by this response to the Office Action. In view of Applicants' amendments and arguments, it is submitted that claims 1-2, 5, 9-18, 23-27, and 29-34 should be allowable.

Respectfully submitted,


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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as express mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date: 7/17/06

Kirk Ekena